

*Application No. 09/735401*  
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*Amendment*  
*Attorney Docket No. S63.2N-11056-US03*

**Remarks**

This Amendment is in response to the Office Action dated February 3, 2004. Claims 61, 64, 65, and 68-82 were rejected under 35 USC 112, second paragraph. Claims 61, 64, 65, 68-71, and 76-78 were rejected under 35 USC 102(b) as being anticipated by Fontaine (5,370,683). Claims 72, 73, 79, 80, and 85 were rejected under 35 USC 103(a) as being unpatentable over Fontaine (5,370,683) in view of Sawyer (5,108,417). Claims 74, 75, 81, and 82 were rejected under 35 USC 103(a) as being unpatentable over Fontaine (5,370,683) in view of Marin et al (5,397,355). Claims 61, 65, and 69 have been amended. Claims 86 and 87 have been added. No new matter has been added. The rejections will be addressed below under headings consistent with the rejection.

**35 USC 112, 2<sup>nd</sup> paragraph**

In the Office Action, claims 61, 64, 65, and 68-82 were rejected under 35 USC 112, second paragraph. Claims 61 and 65 have been amended to address the indefiniteness issues and are believed to be in condition for allowance. Claim 61 has been amended to address the antecedent basis issue. Claims 61 and 65 have been amended to remove the "erythrocyte" language and replace it with "biconcave disc" language. Such a shape is shown two-dimensionally in Fig. 5C of the original application and described on page 28 lines 17-18 as having a shape similar to an erythrocyte or a bone, rounded but with narrower mid-section and thicker ends.

The Office Action stated that the language "further comprising a plurality of serpentine bands" of claims 69 and 71 was indefinite for double recitation of the same element. Applicant respectfully disagrees as independent claims 61 and 65 do not recite "a plurality of serpentine bands". Applicant, nevertheless, has amended the claim by deleting the word "further". The amendment does not narrow the scope of the claim.

Applicant respectfully requests that the rejection of claims 61, 64, 65, and 68-82 for indefiniteness be withdrawn.

**35 USC 102(b)**

Claims 61, 64, 65, 68-71, and 76-78 were rejected under 35 USC 102(b) as being

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anticipated by Fontaine (5,370,683). Fontaine does not teach or disclose struts having a cross-section substantially of a two-dimensional biconcave disc shape. Thus, Fontaine does not anticipate amended claims 61 and 65. Applicant believes claims 61 and 65 are in condition for allowance. Claims 64, 68-71, and 76-78 are believed to be in condition for allowance for at least the reason of being dependent upon allowable base claims.

Applicant respectfully requests that the 35 USC 102(b) rejection as being anticipated by Fontaine be withdrawn.

**35 USC 103(a)**

Claims 72, 73, 79, 80, and 85 were rejected under 35 USC 103(a) as being unpatentable over Fontaine (5,370,683) in view of Sawyer (5,108,417). The Office Action acknowledges that Fontaine fails to disclose a taper. However, as discussed above, Fontaine also does not teach or disclose struts having a cross-section substantially of a two-dimensional biconcave disc shape as recited in independent claims 61 and 65. Sawyer does not provide the missing teaching of struts having a cross-section substantially of a two-dimensional biconcave disc shape. Thus, claims 72, 73, 79, 80, and 85 are believed to be in condition for allowance for at least the reason of being dependent upon allowable base claims.

Applicant respectfully requests that the 35 USC 103(a) rejection of claims 72, 73, 79, 80, and 85 be withdrawn.

Claims 74, 75, 81, and 82 were rejected under 35 USC 103(a) as being unpatentable over Fontaine (5,370,683) in view of Marin et al (5,397,355). The Office Action acknowledges that Fontaine fails to disclose a taper. However, as discussed above, Fontaine also does not teach or disclose struts having a cross-section substantially of a two-dimensional biconcave disc shape as taught in independent claims 61 and 65. Marin et al does not provide the missing teaching of struts having a cross-section substantially of a two-dimensional biconcave disc shape. Thus, claims 74, 75, 81, and 82 are believed to be in condition for allowance for at least the reason of being dependent upon allowable base claims.

Applicant respectfully requests that the 35 USC 103(a) rejection of claims 74, 75, 81, and 82 be withdrawn.

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**CONCLUSION**

In view of the foregoing it is believed that the present application, with pending claims 61, 64, 65, and 68-85, is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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